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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KATHLEEN MARY DUNPHY,

Plaintiff and Appellant,

v.

KELLY SUE DUNPHY WILKEN,

Defendant and Respondent.

G053567

(Super. Ct. No. 30-2015-00779480)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David L. Belz, Judge. Affirmed.

Kathleen Mary Dunphy, in pro. per., for Plaintiff and Appellant.

Bryan Cave and Sean K. McElenney for Defendant and Respondent.

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Plaintiff Kathleen Mary Dunphy¹ appeals the trial court's judgment dismissing her amended petition after the court sustained defendant Kelly Sue Dunphy Wilken's demurrer without leave to amend. The amended petition alleged breach of trust and fraud, among other things, arising out of the management of a family trust. Kelly Sue argued the amended petition was time-barred by the applicable statute of limitations and the doctrine of laches. We agree and affirm the judgment.

I

FACTS

The parties' parents, Robert and Sue Dunphy, created the Dunphy Children's Trust (the trust) on August 13, 1981. Robert was the trustee. The trust initially consisted of \$3,000 and listed the six Dunphy children as beneficiaries. Kelly Sue was the oldest of the Dunphy children. The trust provided the income of the trust would be distributed equally between the beneficiaries and the principal was to be distributed to the beneficiaries for their education. By its terms, the entire trust was to be distributed in equal shares to all living beneficiaries on December 5, 1998, when the youngest beneficiary turned 25 years old. Kathleen admits she was a beneficiary of the trust but alleges no distribution was ever made to her.

In 1987, Kelly Sue filed a petition for removal of trustee, for appointment of successor trustee, and for appointment of temporary trustee in Orange County Superior Court case No. A139953 (removal petition), to remove her father as trustee and become a

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We refer to the parties by their first names for the ease of the reader. No disrespect is intended. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1.)

successor trustee.² This was done because of custody concerns in the parents' divorce proceeding. The removal petition stated the trust would continue until December 5, 1998, when the youngest beneficiary turned 25 years old. It also listed the assets of the trust as exceeding \$400,000. In support of the removal petition, Kathleen submitted a declaration signed under penalty of perjury in which she acknowledged the contents of the removal petition. Kathleen alleges, however, that she did not receive a notice of hearing, a copy of the removal petition, nor a copy of the trust. Kathleen contends she had no knowledge of the terms of the trust until the passing of her father in 2013.

The 1987 declaration signed by Kathleen stated, in pertinent part: "A vacancy exists in the office of trustee of the trust by reason of the facts set forth in the Petition for Removal of Trustees, For Appointment of Successor Trustee and For Appointment of Temporary Trustee filed in this proceeding. I do acknowledge the contents of the Petition and do consent to the action requested by this Petition." Kathleen contends the wording in the 1987 declaration, "the contents of the Petition," is "vague and ambiguous in the context of the facts surrounding the execution of the [1987 declaration], if it is contended that [Kathleen] acknowledged all statements set forth in the petition and the terms of the trust. It was impossible for [Kathleen] to make such a broad acknowledgement because she never received a copy of the petition or the trust, nor were the contents of those documents explained to her in any way, except for a limited explanation offered by her father" The removal petition attached the trust as an exhibit.

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On May 26, 2017, we issued an order to the parties stating we intended to take judicial notice of the removal petition, exhibit A to the removal petition attaching the trust, and Kathleen's 1987 declaration and nomination of trustee (the 1987 declaration). Having received no objection from the parties, we hereby take judicial notice of the removal petition, exhibit A to the removal petition, and the 1987 declaration. (Evid. Code, § 452, subd. (d).)

After her father's death, Kathleen began to search for information regarding the trust and a potential inheritance. Kathleen discovered Kelly Sue, as trustee, obtained a judgment of \$364,873.11 against her parents. The judgment was satisfied in 1995. Kathleen alleged she had no knowledge of the terms of the trust and she simply assumed it was a testamentary instrument.

Kathleen filed an amended petition for redress for breach of trust, for fraud and punitive damages, conversion, constructive trust, injunctive relief, and declaratory relief (amended petition) in 2015. The trial court sustained Kelly Sue's demurrer to the amended petition without leave to amend. The trial court determined Probate Code section 16460³ set forth the applicable three-year statute of limitations and the action was time-barred. The court based its conclusion on Kathleen's admission that she was a beneficiary of the trust, that she acknowledged the contents of the removal petition, and consented to the action requested by the removal petition. "With actual and constructive knowledge, [Kathleen] either knew or reasonably should have discovered and known facts essential to her claim within three years after her claims accrued on 12/5/1998 [the date of distribution]."

II

DISCUSSION

"[W]e apply the de novo standard of review in an appeal following the sustaining of a demurrer without leave to amend." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) "In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable

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All further statutory references are to the Probate Code.

interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.]” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The parties agree the applicable statute of limitations is governed by section 16460, subdivision (a)(2). This section applies to claims alleging liability of a trustee to a beneficiary and requires bringing an action within three years after the claim is “discovered or reasonably should have [been] discovered.” (§ 16460, subd. (a)(2).) A beneficiary need not have actual knowledge of a claim or understand the legal significance of the information before the statute starts running. All that is required is the beneficiary know, or reasonably should know, facts essential to the claim that would “put the beneficiary on notice to take action.” (*Britton v. Girardi* (2015) 235 Cal.App.4th 721, 733.)

Kathleen argues she did not discover the claim until her father’s death in 2013, and that the statute of limitations did not begin to run until she knew there was a breach of the trust. Despite the clear language of the statute, Kathleen relies almost exclusively on the argument that she lacked actual knowledge of wrongdoing by Kelly Sue, and that such knowledge is required to trigger the three-year statute of limitations. She further contends even if she knew of the trust’s 1998 distribution date, the statute of limitations would not have been triggered because “that is not the same thing as knowing her sister had breached her fiduciary duties.”

Kathleen’s argument is unavailing. She admits she was a beneficiary of the trust and she knew the contents of the removal petition, which listed the 1998 distribution date and attached the trust as an exhibit. She cannot attempt to plead around these admissions. This is unlike the situation in *Quick v. Pearson* (2010) 186 Cal.App.4th 371 (*Quick*). There, the Court of Appeal determined the trial court erred in sustaining a demurrer without leave to amend because section 16460, subdivision (a)(2), did not bar the action. (*Id.* at pp. 378-379.) The plaintiff alleged he was the grandchild of the

testator and a beneficiary of a testamentary trust. (*Id.* at p. 374.) The plaintiff also contended the statute of limitations did not bar his action because discovery of the identity of his biological father did not put the plaintiff on notice he might be entitled to a share of a trust established by his grandfather. (*Id.* at p. 379.) In addition, the trustee made “efforts to conceal information that would have permitted [the plaintiff] to discover his interest in the trust.” (*Id.* at pp. 375-376.) The Court of Appeal found the plaintiff could not have reasonably discovered his interest in the trust any sooner than when he was advised of the trust’s existence, and his claim was timely under section 16460, subdivision (a)(2). (*Ibid.*)

Here, however, Kathleen admitted she was a beneficiary of the trust as early as 1987, and did not allege her interest in the trust was concealed from her. The three-year statute of limitations commenced on December 5, 1998, the final distribution date of the trust. Kathleen’s claim, if any, accrued as of that date. Kathleen cannot toll the statute of limitations by claiming she was unable to discover the claim by the distribution date. Her own allegations in the amended petition demonstrate she had actual knowledge of the existence of the trust; her status as a beneficiary of the trust; and the contents of the removal petition, which attached to it was the trust as an exhibit. In addition to her actual knowledge, Kathleen had constructive knowledge of the trust and its terms because she admits she was a trust beneficiary. As a beneficiary, she was entitled to request a copy of the trust and related information, through which she should have reasonably discovered the distribution date. Kathleen was also on inquiry notice as a trust beneficiary, and could have obtained information about the trust, as she eventually did in 2013 through public records. Unlike the situation in *Quick*, where the existence of the trust and the petitioner’s status as a beneficiary were hidden from the plaintiff, thereby tolling the statute of limitations, here, Kathleen had actual and constructive knowledge of the trust and its terms.

Kathleen's amended petition demonstrates she had actual and constructive knowledge of the trust and its contents. Because her right to a trust distribution accrued on December 5, 1998, the three-year statute of limitations bars all of Kathleen's claims.⁴

III

DISPOSITION

The judgment is affirmed. Kelly Sue shall recover her costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.

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While Kathleen lists several different causes of action in her amended petition, the parties do not dispute the applicable statute of limitations is section 16460, subdivision (a)(2). In any event, because Kathleen's claims accrued on December 5, 1998, all other applicable statutes of limitation have also expired and each and every claim is time-barred by both the statute of limitations and the doctrine of laches.